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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/830,566	05/07/2001	Anton Negele	205892USOPCT	1079

22850 7590 09/04/2003

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14
EXAMINER

REDDICK, MARIE L

ART UNIT	PAPER NUMBER
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1713

DATE MAILED: 09/04/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/830,566

Applicant(s)

NEGELE ET AL.

Examiner

Judy M. Reddick

Art Unit

1713

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 06 August 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 4 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
6. ☒ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: NONE.Claim(s) objected to: NONE.Claim(s) rejected: 1-10.Claim(s) withdrawn from consideration: NONE.

8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☒ Other: See Continuation Sheet

Judy M. Reddick
Judy M. Reddick
Primary Examiner
Art Unit: 1713

Continuation of 10. Other: The rejection of claims 1-7 under 35 USC 102(e)/103 over Fong et al and the rejection of claims 8-10 under 35 USC 103 over Fong et al in combination with Matsushima et al stand as per reasons clearly stated in the previous Office Action per paper no 11, 04/22/03. As to the Declaration under 37 CFR 1.132 filed on 08/06/03, such has not been considered as per having been untimely filed(subsequent to the Final Rejection). However, from a cursory review, the Declaration appears to be insufficient to remove the rejections based on Fong et al(alone) or further in combination with Matsushima et al. While Counsel argues that the Declaration proves that the aqueous dispersions of Fong et al could not be formed without the presence of inorganic salt(s), the amount of salt used in the comparative Run appears to be very close to the upper limit of salt authorized by Fong et al. More specifically, Counsel has not shown that amounts as low as "about 5 wt.%" of salt, authorized by Fong et al, do not meet the "substantially free of" clause, as claimed. Given its broadest, reasonable interpretation, the "substantially free of" clause would include "about 5 wt.%" of inorganic salt(s), absent some definite guidelines from the specification disclosure as to what the "substantially free of" clause includes. To this end, the Declaration under 37 CFR 1.132 is insufficient to confer patentability under 35 USC 102. Further, the rejection of claims 1-10 under 35 USC 112, 2nd paragraph based on the recited "substantially free of stabilizing inorganic salt" per the previous Office Action(paper no. 11, 04/22/03, paragraph no. 2) stands.